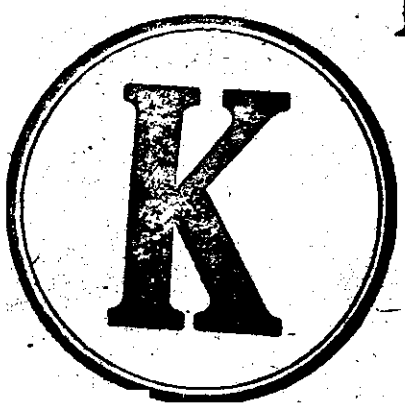

1951 P 27E

File No. O. Electricity
Legal Department

A **BRANCH**

Subject:— Opinions under the Indian Electricity Act 1910

File No. O. Electricity/51

Gen. 194 e.

148-A

C O N T E N T S.

Legal Department File No. O. Electricity /1951.

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4.	O.No.6308 18.4.51.	---------- do ----------	13-14.
5.	R.I.No.7525. 14.4.51. O.No.6309 8.4.51.	Criminal Procedure Code - Sec.145— Magistrate acting under sec. --- is a court and therefore it would not be proper for Govt. to give any instructions in the matter.	15-16.
6.	R.I.No.7498 14.4.51. O.NO. 10175 27.6.51	Sec. 28 — Supply of electricity by Municipal Corporation --- whether sanction of Govt. under sec. --- will be necessary ----	17-20.

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7.	R.I No.10603 13.7.49. O.No.13714 29.11.49. R.No.21x9x51. O.No 15083. 22.9.51.	Cl. VI (1) Proviso 1(a) of the Schdule — The Ahmedabad Electricity Co. Ltd Amendment of Cl. 6 of the agreement executed by the Co.—— Whether the Govt. of India's view — that the provision of the execution of the agreement for the minimum period of two years specified in — is intended to safeguard the interest of the licensee and therefore recommendatory and there would be no legal bar to there being agreements of a shorten duration is correct. ——	21-38.
8.	O.No. 15966 8.10.51	Sec. 4(1) (a) Unjha Unawa Electric License — Whether it would be sufficient if the Baroda Govt. Order dt. 13.12.48 renewing the licence is cancelled by issuing a letter to Shri Yadha. Whether in view of the fact that the period for commencement of the work would expire on 12th Dec. 1951 it would be correct to revoke the licence earlier.	39-42.

V.H.D./30.6
5a.

Submitted.

By G.R., P.W.D. No. 1785/48 dated 29.5.1950 Govt. appointed the Electrical Engineerrer to Govt. to act as an arbitrator in the dispute between the Matheran Electric Supply Co. Ltd. and the Matheran Hill Station Municipality re. the changes levied by the Coy. for the supply of electricity to public lamps. The Municipality contends that as there is in existence an agreement between itself and the Coy. under clause 11 of which provision has been made for the reference of disputes re. such charges to two arbitrators to be appointed by the municipality and to a committee arbitrator appointed by the Govt. The R.L.A. is requested to advise whether in these circumstances ex parte arbitration can be proceeded with.

2. Para. XII of the Schedule to the Electricity Act, 1910, provides (i) the price to be charged by the licensee and to be paid to him for energy supplied for the public lamps and (ii) the mode in which these charges are to be ascertained shall be settled by agreement . The concluding clause of that para. is important. It provides that where any difference or dispute arises the matter shall be determined by arbitration. Apparently the point how a dispute can be settled cannot be the subject-matter of an agreement contemplated by para. XII. The provisions of the Schedule are under sect. 3(2) (f) of the Electricity Act, 1910 , part of the licence granted for the supply of energy. Hence any agreement between the Co. and the local authority cannot override the specific provisions of the Act. Sec. 52 of the Act provides that unless otherwise expressly provided in the licence a matter in dispute shall be decided by such perso

as the State Qpvt. may nominate in that behalf on the application of either party. It is presumed there is no such express provision in the licence granted to the Natheran Electricity Co. In the circumstances the appointment of Shri Nadkarni cannot be challenged by the Municipality. The arbitrator should therefore give a notice to the Municipality about his intention to proceed with the arbitration and if in spite of that notice the Municipality fails to attend, there would be no objection to his proceeding to hear the matter ex parte. Please see in this connection R.L.A.'s opinion No. 4792 dated 19.5.1948.

V.M.D./29.6
4c.

Office of the R.L.A.

Indian Electricity Act, 1910. sections 3(2)(f) and 52: Schedule, para XII. Dispute between the Matheran Electric Supply Co. & the Matheran Hill Station Municipality.

Paragraph XII of the Schedule to the Electricity Act, 1910, provides (i) the price to be charged by the licensee and to be paid to him for energy supplied for the public lamps and (ii) the mode in which these charges are to be ascertained shall be settled by agreement. The concluding clause of that paragraph is important. It provides that where any difference or dispute arises the matter shall be determined by arbitration. Apparently the point how a dispute can be settled cannot be the subject-matter of an agreement contemplated by paragraph XII . The provisions of the Schedule are, under section 3(2) (f) of the Electricity Act, 1910, part of the licence granted for the supply of energy. Hence any agreement between the Company and the local authority cannot override the specific provisions of the Act. Section 52 of the Act provides that unless otherwise expressly provided in the licence a matter in dispute shall be decided by such person as the State Government may nominate in that behalf on the application of either party. It is presumed there is no such express provision in the licence granted to the Matheran Electricity Company. In the circumstance the appointment of Shri Nadkarni cannot be challenged by the Municipality. The arbitrator should therefore give a notice to the Municipality about his intention to proceed with the arbitration and if in spite of that notice the Municipality fails to attend, there would be no objection to his proceeding to hear the matter ex parte. Please see in this connection R.L.A's opinion No. 4792 dated 19th May 1948.

Sd/- P.N.Lad.
17.1

Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 1158 , dated the 18th January 1951.

4893 dt. 12.3.51.

Submitted with reference to P.W.D. note at p. 33 ante. Attention is invited to R.L.A.'s opinion No. 18265, dated 27.12.1950 wherein advice was given that there was no legal objection to the Govt. Of Bombay appointing an arbitrator to determine the valuation of the Iqbal Electric Power House at Palanpur. Attention is also invited to the Office note underlying that opinion. Where the facts of the reference have been mentioned. As advised by the R.L.A. in his opinion the P.W.D. proposes to issue orders as at pp. 59-60 of the correspondence section nominating the Executive Engineer, Banas Kantha, as an arbitrator, The papers are shown to the R.L.A. at this stage; but presumably the point appears to be as regards the form of the order. This point was raised before (see p. 25 within).

the R.L.A. before the proposed order is issued. No specific point has been raised for his consideration.

2. The draft orders of nomination of an arbitrator are presumably being issued in exercise of the power conferred by sec. 52 of the Indian Electricity Act, 1910. That sec. provides that where any matter is, by or under the Act, directed to be determined by arbitration, the matter shall be determined by such person or persons as the State Govt. may nominate in that behalf. Under this section the State Govt. can nominate one single individual or a No. of them. Besides no particular formality is prescribed. The draft at pp. 59-60 of the corpesondance section appears therefore to be in order. pps. may therefore be seen and returned

Sd/-
16.3

Sd/-

A may be done .

Sd/- R.T.K.
17.3

U.R. to P.W.D. No.4432,dt. 19.3.1951.

Office of the R.L.A.

The R.L.A. is requested to advice on the legal aspect of the application made by the Mahad Electric Supply Co. Ltd., at pp. 7-15 of the correspondence section post. The request made by the Company is that the electric licence granted to Messrs. Oak Bros. and Thopte Company should be revoked and one be granted to the Company. By their order dated 23rd June 1937 the Government of Bombay had sanctioned the Mahad Electric Licence, 1937 in favour of Messrs. G.R. Oak and N.P. Thopte for the supply of electrical energy in the a reas and with the powers and upon the terms and conditions specified therein. Clause 12 of the licence provided for the power of the licensee to assign the licence and transfesr the undertaking to any individual or company. But no such assignment has yet been made. It appears that on 5th December 1941 an agreement had been entered into between the Mahad Electric Supply Company and the Licensees whereby the latter had agreed to work as Managing Agents of the Company for a period of 13 years. Shri Oak however tendered resignation of the post of managing agent, the resignation being accepted by the Company on 31.3.1951. Recently the Mahad Electric Supply Co. filed a suit in the High Court against the licensee for a declaration that the Mahad Electric Licence, 1937, belongs to the Company and that the same be transferred to that Company. The suit was, however, dismissed on the 15th January 1951 for want of jurisdiction. Subsequently, on 1st April 1951 the Chairman of the Mahad Electric Company took possession of the power-house and locked it. As a result the supply of electricity in the town has been stopped. The licensee contends that he is prevented from carrying out the obligations under the licence as well as under the provisions of the Indian Electricity Act, 1910. In his petition dated 4th April

1951, the licensee, therefore, requests the intervention of Government and restoration of the possession of the power-house to him. The Mahad Electric Supply Company, on the other hand, state that they are the owners of the plant and the power-house that the licensee was working as servant of the Company, that the possession of the plant and the power-house had always been with the Company, and that because of the resignation of the post of Managing Agent by Shri Oak, he is in no way connected now with the Electric Supply Company.

2. Under the Mahad Electric Licence, 1937, the licence was granted in favour of Shri G.R. Oak and Shri N.P. Thopte. But it appears that Shri Thopte's interest has been, in the meanwhile, transferred to Shri Oak. The licence requires electricity to be supplied within the area specified in clause 5. The licence has not been assigned under clause 12. The responsibility to work the licence, therefore, falls on Shri Oak alone, and Government is not concerned with the Mahad Electric Supply Company, at this stage. Whatever may be the relations between the Licensee and the Company it is a fact that the supply of electricity has been discontinued. Under section 42(b) of the Electricity Act, 1910, a licensee who without reasonable excuse, the burden of proving which shall lie on him, discontinues the supply of energy or fails to supply the energy is liable to punishment. Section 4(1)(a) gives power to the State Government, if in its opinion, the public interest so requires, to revoke a licence where the licensee in its opinion makes wilful and unreasonably prolonged default in doing anything or required of him under the Act. It may be that the power-house has been taken possession of by the Chairman of the Mahad Electric Supply Company, but it does not appear that the licensee, Shri Oak, has taken the necessary steps to regain posses-

sion and to continue to discharge his liabilities under the licence. As observed by Secretary, P.W.D., in the margin on page 5 of the correspondence section, it is for the licensee, and not for Government to move in the matter if he wants to take possession of the power-house. It seems, moreover, that this situation has been precipitated by the licensee tendering his resignation as Managing Agent, and there does not appear to be any prospect of an early settlement of the dispute between the Company and the licensee and of the resumption of supply. In these circumstances, the licensee can be said to have committed a default in continuing to supply electricity and there would, therefore, appear no objection to Government revoking the licence under section 4(1) and granting a fresh licence or sanction under section 28 in favour of the Mahad Electric Supply Company. But before revoking the licence Government should give notice to the licensee and follow the procedure ~~[illegible]~~ the procedures prescribed in the Act for the purpose.

Sd/- J.R.Dhurandhar.
18.4

Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 6307, dated the 18th April 1951.

V.M.D./29.6
40.

R.I.No.7338/12.4.51.

~~Legal~~
Office of the R.L.A.

Please see the linked case.

Sd/- J.R.Dhurandhar.
18.4

Remembrancer of Legal Affairs.

U.R. to P.W.D. ,No. 6308, dated the 18th April 1951.

V.M.D./29.6
40.

7525.
14.4.51.

Submitted with reference to Secy. P.W.D's note at p. 11 ante. for facts please see office note of today in the linked case. In reply to the Collector's letter at p. 9 ante the P.W.D. propoes to inform the Collector that a magistrate acting under Sec. 145 Cr. P. Code is a court and therefore it would not be proper for Government to give any instructions in the matter.

2. The view expressed by the P.W.D. appears to be correct. (Cf. to use of the wards" his Court" in sub-section (1) of Sec.145) Besides of the purpose of this section the magistrate must satisfy himself and use his own distriction as to the necessity of proceedings Neither the High Court nor the senior judge has power to order a magistrate to take proceedings under the section (8): (30 Cal. 112 : 20 Cal 520: Mitra's Cr.Pro. Code, p. 2326)

This file may therefore be seen and returned to the P.W.D.

Sd/-
17.4

Sd/- R.W.K.
18.4

Sd/-
18.4

Sd/- J.R.Dhurandhar.
18.4

U.R. to P.W.D. No. 6309 , dated 18.4. 1951.

L.D.R.I. No. 7498 dt.14.4.51.

Submitted w.r. to thenote of the P.W.D. at pp. 25-36 ante.

For the full facts of the case, pl. see the letter dt. 22.8.1950 of the Spl. Engr., Bombay Muny. at pp. 21.23 in the linked file 2706/48E1.

The facts are shortly as follows:-

In connection with the Vaitarna-cum-Tansa Scheme it is proposed by the Bom. Muny. to generate electrical power by installing two 25 K.W. generating sets etc. for the operation of the construction plant, pumping plants and use in the residential quarters of the personal connected with the scheme including the Municipal staff, the Contractor's staff, the Police Station, Post & Telegraph Office and Cinemas and a few shops etc. especially established only for the duration of the scheme.The two power houses that will be temporarily installed there, will be removed after the completion of the works. It is not the intention of the Muny. to supply and or sell power to persons, not connected with the workd. The Spl. Engr. formerly in his letter 24.6.50 at p. 3 ante agreed that if the Govt. were to grant sanction under sec. 28 of the Indian Electricity Act, 1910, there would be no necessity for granting a licence under sec. 3 of the Act. In his letter dt. 22.8.50, the Spl Engr. on reconsideration of the facts relying of the R.L.A's opinion No. 629 dt.14.1.50 (p. 19 Slip. A) in the case of M/S. Kirloskar Bros., contends that no sanction of the Govt. is even necy. under sec. 28(1) of the Indian Electricity Act, 1910. The office note of the P.W.D. at p, 26 ante in view of the fact that supply of energy is not the main business of the B.M. and in supplying energy to various consumers at Vaitarana, it will not be making any profit, the Muny. may be permitted to generate and supply energy at Vaitarna without obtaining a sanction

der sec. 28 of the I.E. Act, 1910, but the Secy., of the P.W.D. opines that after going through pages 117-124 of Nearas' Law relating to Electric Energy in India, he is inclined to the view that the Bombay Hmy. needs sanction of Govt. under sec. 28(1) of the I.E. Act, 1910.

The R.L.A. has been requested to advise in the matter. Sec. 3(1) of the I.E. Act, 1910, runs as follows:-

The provl. Govt, may, on application made in the prescribed form and on payment of the prescribed fee (if any), grant to any person a licence to supply energy in any specified area and also to lay down or place electric supply lines for the conveyance and transmission of energy.-

Sec. 28(1) of the I.E. Act, 1910, runs as follows:-

No person, other than a licensee, shall engage in the business of supplying energy except with the previous sanction of the Provl. Govt. and in accordance with such conditions as the Provl. Govt. may fix in this behalf and any agreement to the contrary shall be void.

A person cannot be considered to be "engaged in the business of supplying energy "within the meaning of sec. 28(1) of the I.E.Act, 1910, unless his main business is to supply energy with a view to making profit, vide R.L.A.'s Opinion No. 629 dt. 14.1.1950, and R.L.A.'s Opinion No. 11915 dt. 15.12.48.

In view of the test laid down in the above two opinions of the R.L.A. the B.M. generating energy in connection with Vaitarna-cum-Tansa scheme would not be considered to be "engaged in the business of supplying energy" and as such would not require any licence under sec. 3 of the Indian E.Act, 1910, but this is doubtful whether this would exempt the B.M. from even obtaining sanction to generate energy for the above scheme as a non-licensee from the Govt. under sec. 28(1) of the Act. Unlike sec. 3 of the old Act 1903, licences are not now compulsory under sec. 28 of the I.E. Act, 1910. Sec. 28 of the Act makes a provision for dispensing with indirectly with licenses in some cases

OFFICE OF THE R.L.A.

Supply of electricity by Municipal Corporation.

Indian Electricity Act, 1910. Sec. 28.

Section 28 of the Indian Electricity Act, 1910, provides that no person, other than a licensee shall engage in the business of supplying energy except with the previous sanction of the State Government. In this case the Municipal Corporation of Bombay proposes to install a power house for generating electrical energy at Vaitarna outside the Corporation limits for supply to its contractors, to the Municipal staff, shops, restaurants, cinema houses, petrol pumps, Post and Telegraph offices and also to other contractors. It is no doubt stated that the charge is being made to prevent wasteful use and not to make profit. But the question of profit would be immaterial in deciding the question whether the Corporation is engaging in the business of supplying electrical energy. (see 22 Q.B.D. 279). In view of the fact that the Corporation intends to supply energy not only to its employees, but to shops, restaurants, contractors, post and telegraph offices, it must be held that it is engaging in the business of supplying energy. (See Glasgow Corporation's case, 1 Tax Cases, p. 122). The sanction of Government under section 28 of the Indian Electricity Act will be necessary in the present case.

Sd/- J.R.Dhurandhar.
26.6
Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 10175, dated the 27th June 1951.

V.M.D./29.6
4c.

R.I. No. 10603
Dated 13th July 1949.

Submitted.

The Ahmedabad Electricity Company Ltd., in September 1947 informed Government that they proposed to amend clause 6 of the agreement executed by the Company with its consumers by reducing the period of supply from theree years to six months. The Electrical Engineer to Government considered that in view of the provisions of clause VI (1) proviso 1 (a) of the Schedule to the Indian Electricity Act. 1910 the proposed amendment would not be in order. On a reference to the R.L.A. in his opinion No. 1954 dated 27.2.1948 he held that the view of the Electrical Engineer to Government is correct. The Company however insisted that the period of two years mentioned in clause VI (1) proviso V(a) of Schedule is permissible and not manadotory and that if circumstances allow a licensee to prescribe a shorter period of contract there is nothing to prevent him from accepting such a shorter period. The matter was again referred to the R.L.A. and in his opinion No. 7993 dated 23.8. 1948 the R.L.A. held that the view taken by the Company is not correct: that there are no reasons to modify the previous opinion; and that "Government may agree to the reduction of the period from 3 years to 2 years but not to six months because this would be inconsistent with the conditions stated in the licence (see section 21 (2)." Government accepted this view and informed the company accordingly. The company not being satisfied

referred the matter to the Central Electricity Commission for advise. The Government of Indias view in the matter as contained in their letter dated 21.5.1949 is that the provision of the execution of the agreement for the minimum period of two years specified in proviso (a) to sub-clause (1) of clause VI of the Schedule is intended to safeguard the interest of the licensee and therefore only recommendatory and there would be no legal bar to there being agreements of a shorter duration. The R.L.A. is requested to state whether the Government of India's view is correct and to obtain the A. G's opinion if necessary.

3. Clause VI (1) proviso 1 (a) of the Schedule provides that the licensee shall not be bound to comply with any requisition unless person making it, tenders to the licensee a written contract, in the form approved by Government duly executed with sufficient security binding himself to take a supply of energy for not less than two years, to such amount as will produce at current rates charged by the licensee a reasonable return to the licensee. This provision is contractively incorporated in every licence granted under the Indian Electricity Act, 1910 by virtue of section 3 (2) (1). Section 21(2) provides that subject to the provisions of sub-section (1) the licensee may with the previous sanction of Government make conditions not inconsistent withthe Act or any rules made thereunder or his licence. These provisions have been construed by the R.L.A. in his opinions No. 1954 dated 27.12.1943 and No. 7993 dated 23.8.1948 as mandatory so that the Company cannot reduce the term of contract to less than two years. It is submitted that the condition being inconsistent with the provisions of the

Office of the R.L.A.

Statement of the Case.

In September 1947 the Ahmedabad Electricity Company Ltd., informed Government that they propose to amend clause 6 of the agreement executed by the Company with its consumers by reducing the period of supply from three years to six months. The Electrical Engineer to Government considered that in view of the provisions of clause VI (1) proviso 1(a) of the Schedule to the Indian Electricity Act, 1910 the proposed amendment would not be in order. On a reference to the R.L.A., the R.L.A. in his opinion No. 1954, dated the 27th February 1948, confirmed the view of the Electrical Engineer to Government. The Company however insisted that the period of two years mentioned in clause VI (1) proviso 1(a) of the Schedule is permissible and not mandatory and that if circumstances allow a licensee to prescribe a shorter period of contract there is nothing to prevent him from accepting such a shorter period. The matter was again referred to the R.L.A.. In his opinion No. 7993, dated 23.8.1948, the R.L.A. observed as follows:

p. 3 ante.

Slip c in P.W.D. file No. 447a/36-I

p. 9 ante

p. 13 ante.

p. 33 ante.

> "The view taken by the Ahmedabad Electric Company that the period of two years mentioned in the first proviso (a) to clause VI (1) of the Schedule is permissive and not mandatory is not correct. Government may agree to the reduction of the period from 3 years to 2 years, but not to 6 months because this would be inconsistent with the conditions stated in the license (see section 21 (2). There appears therefore no ground for modifying R.L.A.'s opinion No. 1954, dated 27th February 1948."

Government accepted R.L.A.'s opinion and informed the company accordingly. The company not being satisfied with this referred the matter to the Central Electricity Commission for advise. The Commission's view

p. 65 ante

which has been communicated in the letter of the Ministry of Works, Mines and Power, Government of India, dated 21st May 1949, is to the effect that the provision of the execution of the agreement must for the minimum period of two years specified in proviso (a) to sub-clause (1) of clause VI of the Schedule is intended to safeguard the interest of the licensee and therefore only recommendatory and there would be no legal bar to there being agreements of a shorter duration.

Even assuming that clause (a) of the first proviso to Clause VI (1) of the Schedule to the Indian Electricity Act, 1910, is a recommendatory and not a mandatory provision, that would not be sufficient to solve the present difficulty. Section 21(2) of the Act, provides that subject to the provisions of sub-section (1), a licensee may, with the previous sanction of the Provincial Government, given after consulting the local authority, where the licensee is not the local authority, make conditions not inconsistent with this Act or with his license or ~~and~~ with any rules made under this Act, etc. It is clear from this provision that a licensee cannot make conditions with his consumers which are inconsistent with the provisions of the Act or with the license or with any rules made under this Act. A license issued for the supply of electricity is in the nature of an agreement between Government and the licensee and the provisions contained in the licence are intended to safeguard the interest not only of the consumers but also of the licensee, for Government is interested in both. The provision in clause (a) of the Proviso to clause VI(1) of the Schedule is to be construed as part of the provisions of the Act by virtue of clause (f) of section 3(2) of the Indian Electricity Act. It is, therefore, clear that compliance with clause (a) of the first proviso to clause VI (1) is

one of the conditions of the agreement between Government and the licensee. Clause VI of the said Schedule is modified to the extent mentioned in clause 6 of the Ahmedabad and District Electric Licence, 1944. This means that the licensee could execute agreements for supply of energy for a period not less than two years. Clause 6 of the agreement with the consumers provided that the period of supply hereunder shall commence as from the date upon which the Company notifies the Consumer that it is ready and willing to supply the Consumer to the full extent of the contract demand and shall continue thereafter for three years, subject nevertheless to the right of the Company and of the Consumer to terminate this agreement under the provisions contained in the Fourth Schedule hereto. These agreements were saved by clause 5 of the conditions of the licence granted in 1944. In view of the expression "conditions not inconsistent with this Act or with his licence or with any rules made under this Act, to regulate his relations with persons who are or intend to become consumers" in section 21(2), the licensee cannot insert in his agreement with his consumers any condition which is inconsistent with his licence. Unless this condition in the licence is now amended by reducing the period of supply from three years to six months it will not be possible to amend clause 6 of the Agreement to be executed by the licensee with the consumers; it would involve a breach of the licence between the licensee and Government and as such it would be in contravention of section 21(2). It is true that the provision of the execution of the agreement for the minimum period of three years as embodied in the licence itself in modification of two years period in the first proviso sub-head (a) to clause

VI (1) is intended to safeguard the interests of the licensee, but so long as this condition in the licence is not amended by reducing the period of supply for six months it would not be legally feasible to execute these agreements for a period of six months.

However as the matter is important and Government desires that the Advocate General be consulted, the Advocate General is requested to express his opinion in the matter.

Sd/- P.M.Lad.
23.11.49

Remembrancer of Legal Affairs.

U.R. to Advocate General, Bombay No. 19714
Dated the 29th Nov. 1949.

V.M.D./30.6
4c.

U.R. to the Advocate General, Bombay,
No. 1374 dated 29th November 1949.

The Electricity Company's Agreement with the consumers stipulates for a period of 3 years as the period during which the consumer binds himself to take energy from the Company. Prima facie it would be reasonable to suppose that that stipulation is one for the benefit and protection of the Company and that if the consumers are willing to stipulate for a shorter period even less than 2 years, they should be at liberty to do so, since the provision would not appear to be one for their protection. It seems to me, however, that whatever may be the object of fixing a period, the provision of the Indian Electricity Act, 1910 preclude any alteration without the sanction of Government. Clause 6(1), proviso (a) of the Schedule, requires that the licensee should bind himself to take a supply of energy for not less than two years. Section 3 (2) (f) of the Act provides that the provisions contained in the Schedule shall be deemed to be incorporated with and to form part of every license granted under Part 2 of the Act, save in so far as they are expressly added to, varied or excepted by the license and shall subject to any such conditions etc., apply to the undertaking authorised by the license. Accordingly, when the license was granted to

the Ahmedabad Electricity Company all the provisions of the Schedule were automatically made part of the terms of that license subject to certain variations. One of the variations was that instead of the period of two years, the period of three years was substituted. It is not open to the licensee of his own accord to vary the terms of his license, since that would constitute a breach of his license.

Reference has been made in the Instructions to Section 21, sub-section (2), which provides that a licensee may make conditions inconsistent with the Act or with his license to regulate his relation with persons who are of intend to become consumers without the previous sanction of the local Government. This provision seems to me to apply in terms to the matter in hand. No doubt, sub-section (1) deals with the prescription of any special form of appliance and so does sub-section (4) but sub-section (2) is very wide in its terms and as upon the plain reading it applies to the facts of this case it cannot be cut down or restricted in its operation merely by reason of sub-sections (1) and (4) having reference only to the use of appliances. The consequence therefore is that, quite regardless of whether a provision

in the license was designed for the benefit of one party or the other, there is no power in the Company to vary it without the sanction of the local Government.

Sd/-

7.9.51.

V.M.D./30.6
4c.

Office of the R.L.A.

A copy of the U.R. to the Advocate General, No. 13714, dated the 29th November 1949 together with a copy of the opinion of the Advocate General (Shri C.K.Daphtary) dated 7th September 1951 is forwarded herewith.

Sd/- J.R.Dhurandhar.
29.9

Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 15083 , dated the 2121 September 1951.

P.W.D./20.6

40.

Legal Department.

In 1937 the Baroda Government had granted to one Shri C.R. Yodha the Unjha Unawa Electric Licence for the supply of electric energy in the towns of Unjha and Unawa under the provisions of the Baroda Electricity Act, 1926-27. The licensee was not however able to complete the works in time. The Baroda Government by their Resolution No. (D) 19/6, dated 13.12.1948, directed that the licence should be continued subject inter alia to the conditions that Shri Yodha deposited a sum of Rs.25000/- and agreed to the forfeiture of that amount in case he was not able to commence the supply within a period of three years from the date of the order. Shri Yodha however failed to furnish the security even in spite of a letter calling for the same from the Director of Commerce, Baroda, on 19th April 1949. After merger the Dy. Secretary, P.W.D. wrote to him on 10th December 1949 allowing him a month's time to furnish the security, failing which he was informed Government would revoke the licence. As no deposit has yet been received from him it is proposed to revoke the licence under section 4(1) (a) of the Indian Electricity Act, 1910. In this connection the P.W.D. has raised the following two questions for the consideration of the R.L.A. :-

(1) Whether it would be sufficient if the Baroda Government Order dated 13.12.1948 renewing the licence is cancelled by issuing a letter to Shri Yodha;

(2) Whether in view of the fact that the period for commencement of the work would expire on 12th December 1951, it would be correct to revoke the licence earlier.

2. The first question is whether the issue of the draft letter at p. 5 of the correspondence section post would be in order. According to that draft letter the P.W.D. proposes to inform Shri Yodha that the Baroda Government order dated 13th December 1948 is cancelled. By the said order of the Baroda Government, the proposal made by the Director of

Commerce, Industries & Labour to continue the Unjha Unava ~~Mh~~Electric licence was approved. The Baroda Order dated 13.12.1948 had therefore served its purpose and what is required to be cancelled now is the licence itself and not the order dated 13.12.1948. It would not therefore be in order to issue the draft letter at p. 5 of correspondence section as proposed by the P.W.D.

3. The next question is whether it would be correct to revoke the licence at this stage. Clause (a) of sub-section (1) of a section 4 of the Indian Electricity Act, 1910, empowers the State Government, if in its opinion the public interest so requires, to revoke a licence if the licensee makes wilful and unreasonably prolonged default in doing anything required of him. In this case, the Baroda Government had agreed to Shri Yodha ~~committ~~ commencing the supply within a period of 3 yrs. from 13-12-48 provided he deposited a sum of Rs 25000/- which was to be forfeited in case of his failure to commence the supply. Since Shri Yodha failed from 13.12.1948 provided he deposited a sum of Rs. 25000/- which was to be forfeited in case of his failure to commence the supply. Since Shri Yodha failed to furnish security, he would not be entitled to the extension of time ~~x~~ granted by the Baroda Government. There would not, in these circumstances, appear any objection to revoking the licence as proposed by the P.W.D.

4. A revisid draft notification is appended.

Sd/-

Additional Secretary to Government.

U.R. to P.W.D. 15966 , dated the 8th October 1951 .

V.N.D./30.6
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